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*Attorneys for the United States of America*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Amanda McKay, on behalf of herself and  
all statutory beneficiaries of M. C. and  
pursuant to A.R.S. §12-612;

Plaintiff,

vs.

Maria Mylene Fabia Abad, M.D., Sun Life  
Center for Women & Children, Inc., an  
Arizona corporation,

Defendants.

Case No.:

**NOTICE OF REMOVAL**

**(Formerly Pinal County Superior Court  
Case No. CV 201501655)**

The United States of America, on behalf of defendants Maria Mylene Fabia Abad, M.D. and Sun Life Center for Women & Children, Inc., hereby gives notice of the removal of *Amanda McKay, et. al. v. Maria Mylene Abad Fabia, M.D., et. al.*, (Pinal County Superior Court No. CV2015-01655) to the United States District Court for the

1 District of Arizona, pursuant to the provisions of 28 U.S.C. §§ 2679(d)(2) and 42 U.S.C.  
2 § 233(c). The United States removes this matter for the following reasons:

3 1. On or about September 4, 2015, Plaintiff commenced this action in the Pinal  
4 County Superior Court by filing a Complaint naming Maria Mylene Fabia Abad, M.D.  
5 and Sun Life Center for Women & Children, Inc. as Defendants. This action was  
6 assigned case number CV2015-01655. Pursuant to LRCiv 3.6, a copy of the Superior  
7 Court docket sheet, a copy of the entire file as of November 13, 2015, and a verification  
8 of state court records are attached as Exhibit A.

9 2. Plaintiff's Complaint alleges that Defendant Dr. Maria Mylene Fabia Abad,  
10 acting within the scope of her employment at Sun Life Center for Women & Children,  
11 Inc., committed certain common law torts which caused damages to Plaintiff. The  
12 Complaint further alleges that Defendant Sun Life Center for Women & Children is  
13 responsible for the same torts.

14 3. The Department of Health and Human Services has determined that Dr.  
15 Maria Mylene Fabia Abad, and Sun Life Center for Women & Children, Inc., an Arizona  
16 Corporation, are deemed to be employees of the Public Health Service for the period and  
17 acts/omissions giving rise to the cause of action alleged in Plaintiff's Complaint. That  
18 determination is binding under 42 U.S.C. § 233(g)(1)(F).

19 4. Pursuant to 42 U.S.C. § 233(a), Congress has provided that the remedy  
20 provided in 28 U.S.C. §§ 1346(b) and 2672 against any person deemed to be a Public  
21 Health Service Officer or employee "for damage for personal injury . . . resulting from  
22 the performance of medical, surgical, dental, or related functions, . . . while acting within  
23 the scope of his office or employment, shall be exclusive of any other civil action or  
24 proceeding" and shall be against the United States.

25 5. Congress has further provided that upon certification by the Attorney  
26 General, or her designee, that an individual defendant was acting within the scope of her  
27 employment, a civil action pending against the employee in state court shall be removed  
28

1 without bond to the United States District Court for the district or division embracing the  
2 place in which the state court action is pending. 42 U.S.C. § 233(c); 28 U.S.C. §  
3 2679(d)(2).

4 6. Filed with this Notice of Removal is a Certification by the United States  
5 Attorney for the District of Arizona that Defendant Dr. Maria Mylene Fabia Abad was  
6 acting within the scope of her federal employment at the time of the incident giving rise  
7 to this suit.

8 7. This action is one which may be removed pursuant to 28 U.S.C. § 2679(d)(2)  
9 and 42 U.S.C. § 233(c) because plaintiff seeks monetary damages relief against Dr. Maria  
10 Mylene Fabia Abad and Sun Life Center for Women & Children, Inc., an Arizona  
11 Corporation, for acts/omissions within the course and scope of their federal duties as  
12 deemed federal employees.

13 8. Pursuant to 28 U.S.C. § 2679(b)(1), no bond is required for removal of this  
14 action.

15 9. Pursuant to LRCiv 3.6, a Notice of Filing Notice of Removal, attaching a  
16 copy of this Notice of Removal, will be sent for filing to the Clerk of the Court, Pinal  
17 County Superior Court.

18 WHEREFORE, the United States gives notice of the removal of this matter  
19 from the Pinal County Superior Court to the United States District Court for the District  
20 of Arizona.

21  
22 Respectfully submitted this this 19<sup>th</sup> of November, 2015.

23  
24 JOHN S. LEONARDO  
25 United States Attorney  
26 District of Arizona

27 s/ Anne E. Nelson  
28 ANNE E. NELSON  
Assistant U.S. Attorney  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2015, I deposited a copy of the foregoing  
into the U.S. Mail, postage pre-paid to the following:

M. David Karnas, Esq.  
Bellovin & Karnas, P.C.  
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s/ Louella M. Short

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